

Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

Replacement of Part 90 by Part 88 to
Revise the Private Land Mobile Radio
Services and Modify the Policies
Governing Them

and

Examination of Exclusivity and Frequency
Assignment Policies of the Private Land
Mobile Services

To: The Commission

PR Docket No. 92-235

Petition for Clarification and/or Reconsideration

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S U M M A R Y

The Industrial Telecommunications Association, Inc. ("ITA") respectfully submits this "Petition for Clarification and/or Reconsideration" of the Second Report and Order in the refarming proceeding.

This Petition addresses the following points:

1. On the radio service consolidation issue, the Commission made its decision from the perspective of what structure would best assist users and licensees to make efficient use of the available spectrum. Two pools will indeed best promote efficient frequency use.

2. Where it appears that an applicant for frequency coordination may be best served by use of railroad, petroleum or power frequencies, the coordinator initially assisting the applicant should be permitted to transmit the application directly to AAR, PFCC, or UTC, as appropriate, for coordination rather than returning the application to the applicant.

3. The prerequisites outlined by the Commission for implementation of trunking are well-intentioned but overly burdensome. ITA believes it would be prudent to modify the process by which licensees are able to implement trunking technologies.

4. There should be provisions for a 90-day notice period, during which licensees intending to convert to trunked operations would be able to identify, and obtain concurrence from, other affected licensees.

5. Coordinators must be permitted to adopt measures to minimize incidents relating to the filing of speculative applications. Specifically, ITA proposes to request additional information from any applicants whose proposed systems appear not to be responsive to bona fide operating requirements.

6. The "safe harbor" power/height table imposes undue constraints on legitimate licensee operational requirements. The safe harbor table should be eliminated.

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Petition for Clarification and/or Reconsideration

The Industrial Telecommunications Association, Inc. ("ITA") hereby respectfully submits this "Petition for Clarification and/or Reconsideration" of the Second Report and Order adopted by the Federal Communications Commission (FCC) in the above-referenced proceeding.¹

I. Preliminary Observation

As a preliminary matter, ITA observes that, for all participants, the refarming proceeding has raised unusually intricate issues, most of which are without precedent in private land mobile radio rule making proceedings. Virtually all of the

¹ Second Report and Order (FCC 97-61), adopted February 20, 1997, released March 12, 1997, summary published at 62 Fed. Reg. 18834 (April 17, 1997) (hereinafter referred to as "Second Report and Order" or "Decision").

major issues involved in this proceeding have entailed a considerable learning experience. With respect to some issues, there is not sufficient time to properly assess the implications of the Commission's decisions within the reconsideration period set by statute.

To place these observations in context, the "safe harbor" power/height limits represent one issue with respect to which we anticipate significant difficulties in implementation. At the time the "safe harbor" table was adopted, concerns had not yet crystallized regarding the unduly severe operational restrictions imposed by the table.² With the benefit of additional analysis of the table, it is now clear that application of the "safe harbor" table would be inimical to efficient system operation. For this reason, ITA asks the Commission's indulgence in considering the comments that follow regarding the safe harbor table.

II. Overall Comments Regarding the FCC's Second Report and Order

A. Merits of Consolidation of Radio Services into Two Pools

ITA understands the significance and difficulty of the Commission's consolidation decision. Certainly, there were many options available to the Commission insofar as consolidation of services was concerned. Moreover, the Commission had to factor in

² The "safe harbor" table was adopted in the Commission's 1995 Report and Order, 10 FCC Rcd. 10076 (1995).

many difficult public interest concerns. Ultimately, however, the Commission determined that consolidation into two pools was the preferred approach. ITA appreciates the Commission's willingness to tackle such a difficult issue with conviction and foresight.

Clearly, the Commission made its decision from the perspective of what structure would best assist users and licensees to make efficient use of the available spectrum. ITA truly believes that two pools will best promote efficient frequency use. The two pool structure, as adopted, eliminates artificial barriers between essentially similar types of uses and promotes competition among frequency coordinators. Both of these developments will work, now and in the future, for the benefit of the American public. ITA applauds the Commission's decision on this very significant issue.

B. Benefits Accruing from the Accommodations Made for the Railroads, Petroleum and Utility Companies

ITA believes that professional frequency coordinators possess a sufficient degree of expertise, experience and sensitivity to special situations to permit them to coordinate any Part 90 frequencies without imposing undue burdens on existing licensees. Thus, ITA is of the view that all professional coordinators, regardless of their allegiance to or familiarity with particular services, would be capable of coordinating systems on railroad, petroleum and utility frequencies.

Nonetheless, ITA recognizes that the coordination process, in part, is intended to instill a degree of confidence in existing licensees that their established radio systems will not be jeopardized or unduly restricted. ITA recognizes, also, that certain railroad, petroleum and utility systems have special requirements. These factors considered, ITA believes there was at least a credible basis in the docket record for establishing special safeguards for railroad, petroleum, and utility systems. ITA therefore does not oppose the Commission's decision to restrict coordination responsibility for the pre-consolidation railroad, petroleum, and utility frequencies to the current coordinators for such operations. In ITA's view, at least for the present, the special provisions adopted in the Second Report and Order for the railroad, petroleum, and utility frequencies should be supported.

III. Issues Raised in this Petition for Clarification and/or Reconsideration

A. Application Process and Flow

Considered together, the consolidation of radio services into two pools and the implementation of competitive frequency coordination have removed many of the inefficiencies inherent in the established coordination process.

ITA believes, however, that the Commission should clarify its decision in the Second Report and Order to further protect against

the possibility that inefficiencies may creep into the system. Specifically, ITA is concerned with the situation in which an applicant may submit a request for coordination to a coordinator other than AAR, PFCC or UTC. Subsequently, it may develop that, after appropriate review of the data base, the coordinator determines that the applicant requires use of available railroad, petroleum or utility frequencies.

ITA urges the Commission to clarify that, in such cases, the coordinator initially assisting the applicant may simply transmit the application directly to AAR, PFCC, or UTC, as appropriate, rather than returning the application to the applicant and instructing the applicant to file with either AAR, PFCC or UTC. The process will be considerably more efficient and less burdensome to applicants if the initial coordinator may interact directly with AAR, PFCC or UTC on behalf of the applicant.

In such cases, ITA's intent is to apply state-of-the-art technical protocols to assess which frequencies best serve the applicant's requirements. ITA will adhere to the standards developed by TIA Working Group 8.8 to assure the highest level of professional analysis. After such analysis, should we conclude that the application warrants referral to AAR, PFCC or UTC, we believe it would be in the applicant's best interests for ITA to simply forward the application to AAR, PFCC or UTC, as appropriate.

The alternative, sending such applications back to the applicants, with instructions for them to refile with another frequency coordinator, would seem to be neither necessary nor efficient. ITA assumes the Commission would have no objection to this suggested application concurrence process.

B. Implementation of Trunking Technologies

In paragraph 58 of its decision, the Commission ruled that licensees could implement centralized trunking, subject to the requirement for obtaining the consent from the licensees of overlapping systems within a 70-mile radius.

ITA agrees that trunked systems, when loaded with a substantial number of mobile units, are generally more efficient than conventional systems. However, the mobile loading is key. A trunked system that lacks the appropriate loading may well be less efficient than a fully loaded conventional system. ITA also notes that centralized trunking operations may in certain circumstances be preferable to decentralized trunking.

These matters having been said, ITA believes that the prerequisites outlined by the Commission for implementation of trunking are well-intentioned but overly burdensome. ITA therefore believes it would be prudent to modify the process by which licensees are able to implement trunking technologies. Under the rules adopted, a licensee desiring to convert to centralized

trunking would have to obtain the consent of co-channel and adjacent channel licensees whose service areas intersect a circle defined by a radius of 70 miles from the base station operated by the trunking candidate.

ITA believes the trunking consent requirement should be based on the actual operational characteristics of the trunking candidate's system rather than a 70-mile radius. In our view, the consent provisions should include only licensees whose service contours intersect the actual service contour of the trunking candidate, i.e., the 37 dBu contour for trunking candidates in the 150-174 MHz band and the 39 dBu contour for trunking candidates in the 421-470 MHz band.

In ITA's view, the candidate for trunked operations should simply have to demonstrate that it has obtained the concurrence of: (1) all co-channel licensees whose interference contour (19 dBu for the 150-174 MHz band or 21 dBu for the 421-512 MHz band) overlaps the trunking candidate's service contour (37 dBu for the 150-174 MHz band or 39 dBu for the 421-512 MHz band); and (2) all co-channel licensees whose service contour (37 dBu for the 150-174 MHz band or 39 dBu for the 421-512 MHz band) overlaps the trunking candidate's interference contour (19 dBu for the 150-174 MHz band or 21 dBu for the 421-512 MHz band).

The approach of allowing a differential of 18 dBu between

interference and service contours is patterned after approaches that have proved successful in the 800 MHz band. ITA suggests that, by keying the concurrence requirement to contours, rather than the 70-mile radius, licensees will be able to avail themselves of trunking technologies more readily. Moreover, there would seem to be no adverse results from adopting this approach.

ITA also urges the Commission to adopt the following additional refinements in the process by which licensees seek to implement trunking technology:

1. There should be provisions for a 90-day notice period, during which licensees intending to convert to trunked operations would be able to identify, and obtain concurrence from, other affected licensees. No other new licensees should be added to the subject frequencies within the trunking candidate's service area for the duration of the 90-day notice period.

2. The 90-day notice period would begin with formal notification to one of the coordinators. Once a coordinator received notice of the intent to pursue trunking, the coordinator would be required to send out notice, within one business day, to all other affected frequency coordinators. This would ensure that the trunking candidate would be able to "lock out" all new co-channel applicants for 90 days, thereby facilitating the concurrence process.

3. There would be no extension or renewal of the 90-day protected period. If, after expiration of the 90-day period, the applicant has not been able to obtain the necessary concurrences and ensure that its application has been filed with the Commission, the applicant could attempt to seek another 90-day notice period, but it would have to be justified to the satisfaction of the frequency coordinator.

4. Only licensees of existing permanent (fixed) stations would be entitled to file a notice of intent to convert to trunked operations. The 90-day/service contour protection would be based on, and extend from, the location of the candidate's fixed station.

C. Authority of Frequency Coordinators

In paragraph 55 of the Second Report and Order, the Commission discusses the authority available to frequency coordinators in the post-refarming environment. Specifically, the FCC makes three points: (1) coordinators may request additional information from applicants when necessary to make a proper frequency recommendation; (2) in the event of a dispute between an applicant and a coordinator, the applicant will have the burden of proof in overturning the coordinator's recommendation; and (3) coordinators may always make recommendations concerning minimizing interference.

ITA believes that it would be beneficial for the Commission to

specifically articulate other areas in which the coordinators would be able to exercise their rightful authority.

The first area that ITA focuses on is database integrity. One of the factors most critical to the successful implementation of the refarming decisions is a reliable and credible database. With all of the different variations on possible channel separations and bandwidth, the responsibility placed on coordinators to maintain database integrity will be substantial.

To make it easier to maintain database integrity, ITA will adopt the following "protocol" when coordinating systems whose bandwidth(s) are not centered on the same center frequencies identified in the rules (the so-called "asymmetrical" systems). For purposes of database recordation, ITA intends to treat these "asymmetrical" systems as if they were actually using the corresponding center frequencies specified in the rules. Based on the database entry, therefore, it will appear that the asymmetrical systems are employing the center frequencies listed in the rules, even though this will not be the case as a practical matter. ITA foresees no adverse results from this approach. To the contrary, it will help to maintain a "clean" and accurate database.

Second, ITA will adopt measures to minimize incidents relating to the filing of speculative applications. Specifically, consistent with paragraph 55 of the Commission's decision, ITA may

request additional information from any applicants whose proposed systems appear not to be responsive to bona fide operating requirements. The intent of requesting this additional information is to discourage speculative applications. The information requested may relate to anticipated system sharers, in the case of a cooperative system, verification of site availability, or details regarding the nature of the communications to be transmitted.

These measures will help to curb abuses as have occurred with respect to entities and individuals who have applied recently for multiple "mobile-only" private carrier (MO6) systems in the hope of "locking up" the existing offset frequencies. In proposing such action, ITA is motivated by a desire to ensure compliance with the FCC's rules and a reasonable measure of operational integrity and control.

ITA also notes that the Land Mobile Communications Council is examining the issue of confronting speculative applications. LMCC should formulate specific recommendations in the near future and, if it does so, will be forwarding those recommendations to the Commission for consideration.

Third, ITA will be increasingly vigilant to identify systems that should be suspended or revoked for failure to construct. In exercising this discretion, ITA will provide the Commission's staff with any relevant information regarding a licensee's apparent

failure to construct or maintain the constructed status of its station.

D. Migration of Low-Power Users

In its decision, the Commission states that accommodating the competing interests of low-power users and licensees seeking high-power operations is not a "trivial matter." ITA agrees. Reflective of the difficulty posed by this transition, the Commission has provided a period of seven months for low-power users to migrate to the new low-power frequencies before the licensing of high-power operations begins.³ This approach is based on a recommendation by the Land Mobile Communications Council. ITA supports the Commission's approach. We believe seven months is a reasonable period of time for low-power users to migrate to newly designated low-power frequencies.

It may be helpful for the Commission to consider augmenting the stated seven-month migration period to avoid being deluged with applications at one time. On this issue also, the LMCC is examining possible approaches for modifying the "migration schedule" to ensure an orderly, manageable flow of applications. LMCC should be submitting its recommendations regarding this matter to the Commission in the near future.

³ Second Report and Order, paragraph 67.

E. Identification of Technical Elements Required for Proper Inter-coordinator Notifications

In paragraph 47 of its decision, the Commission has identified the minimum information that must be exchanged between coordinators regarding completed coordinations. Using the Commission's list as a starting point, the coordinators are currently engaged in an effort to identify the optimum list of technical elements that will be required to give proper effect to the 24-hour notification requirement. This list of technical data elements should be furnished to the FCC no later than next month.

F. Oversight of Coordination Fees

In its petition for reconsideration, Florida predicted a "windfall" for coordinators with respect to coordination of low power users who are migrating to newly designated channels. Without commenting on the merits of Florida's statement, the FCC has encouraged coordinators to develop reasonable fee schedules that will reflect the relative ease of coordinating migrating systems.

ITA believes that one of the primary strengths of a system of competitive coordination is that users will have a distinct array of choices when selecting a frequency coordinator. The availability of choices, coupled with the natural competitive forces, will help to protect against any such "windfalls."

Florida, as well as all other users, will be able to select a coordinator that offers the most competitive pricing.

G. "Safe Harbor" Table

As implemented in the Report and Order in this proceeding, with modifications adopted on reconsideration in the Memorandum Opinion and Order, the "safe harbor" table is excessively confining. In areas of high terrain, the safe harbor table is totally impractical.

Under the new rules adopted in the Report and Order, all base stations with service areas greater than 80 km would be secondary. On reconsideration, the Commission exempted existing stations from the power and height limits set forth in the safe harbor table. With respect to new stations, however, the Commission stated that "coverage areas up to 80 km around a single base station will serve the vast majority of licensees."⁴

ITA respectfully disagrees. Experience has shown that limitations imposed on height and power must be reasonably related to users' actual technical requirements. Based on ITA's experiences, and with the heightened awareness resulting from conversations with individuals having an abundance of experience in the industry, we conclude that the coverage areas provided for in

⁴ Memorandum Opinion and Order, paragraph 36.

the "safe harbor" are not realistic. These coverage distances will not accommodate users' needs, even in areas not affected by great variations in terrain height. ITA believes, instead, that the respective 37 dBu contour, for VHF frequencies, and 39 dBu contour, for UHF frequencies, should govern the implementation of new systems, with special exceptions crafted for mountaintop areas. Such an approach would conform the height and power limits to the actual system requirements.

H. Consistency in Power Limits

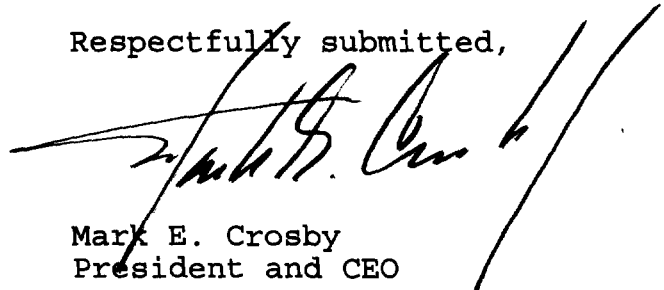
In the rules adopted in this proceeding, there are confusing variations in the way the power limits are expressed. An example of the inconsistencies will illustrate ITA's concerns. In Section 90.35, for limitations (42), (60) and (61)(ii), the power limitation is expressed in terms of Effective Radiated Power (ERP). In the same rule section, for limitations (22) and (46), the power limit is stated merely as "Power," without specification as to whether the reference is to output power or ERP. Finally, for a variety of other limitations in the same rule section, such as limitation (4)(iv), (14), (29), and (34), the power limit is expressed in terms of output power. To avoid future misunderstandings, the limitations should all express power using an identical reference of measurement.

I. Implementation of Protected Service Areas or other Channel Exclusivity Provisions for Conventional (Non-trunked) Radio Systems

As noted in paragraphs 56 and 57 of the Second Report and Order, the issue of exclusive channel assignments was raised in the Further Notice in this proceeding and remains an issue yet to be resolved. It is ITA's view, based on experiences over the years, that the channel exclusivity provisions, whether couched as a "protective service area" or in other terms, should apply only to trunked systems. ITA does not believe these provisions should be readily extended to conventional systems. In ITA's view, licensees of non-trunked systems should be required to show a minimum of 150 mobile units to gain exclusive use within the applicable 37 dBu or 39 dBu contours. ITA believes there will be unique circumstances, such as manufacturing plants engaged in the production of hazardous materials, where a prudent approach to spectrum management dictates protection along the licensee's relevant 37 dBu or 39 dBu contour, provided there are sufficient mobiles in operation to justify such protection.

WHEREFORE, THE PREMISES CONSIDERED, the Industrial Telecommunications Association, Inc. submits the foregoing Petition for Clarification and/or Reconsideration and urges the Federal Communications Commission to act in a manner consistent with the views expressed herein.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Mark E. Crosby", is written over the typed name and title. The signature is stylized with a large, sweeping initial 'M' and a long, horizontal stroke extending to the right.

Mark E. Crosby
President and CEO

Dated: May 19, 1997